

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7)
8) No. 13-10048-FDS
9 vs.)
10)
11 KING BELIN,)
12 Defendant.)

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14
15 BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

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18 HEARING

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20
21 John Joseph Moakley United States Courthouse
22 Courtroom No. 2
23 One Courthouse Way
24 Boston, MA 02210

25
May 11, 2015
3:57 p.m.

Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3204
Boston, MA 02210
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1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by JOHN A. WORTMANN, JR.,
4 ESQ., 1 Courthouse Way, Suite 9200, Boston, Massachusetts
02110;

5 For the Defendant:

6 PAUL J. GARRITY, ESQ., 14 Londonderry Road,
7 Londonderry, New Hampshire 03053.

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PROCEEDINGS

THE CLERK: All rise. Thank you. You may be seated.
Court is now in session in the matter of United States vs.
King Belin, Criminal Matter Number 13-10048.

Counsel, will you please identify yourself for the
record.

MR. WORTMANN: Your Honor, good morning, John Wortmann
for the United States.

MR. GARRITY: Good morning, your Honor, Paul Garrity
for King Belin.

THE COURT: This is the sentencing of King Belin. I
received really just a few minutes before I came on the bench a
motion to continue the sentencing hearing and then an amended
motion to continue the sentencing hearing, the difference
being, I think, is whether or not the government objects to the
motion. Why don't we take that up first. Mr. Garrity.

MR. GARRITY: Yes, your Honor. Initially, I'll just
say, Judge, I apologize for the late nature of the filing. I
just came across *Johnson v. United States* yesterday when I was
preparing for the hearing, and when I read the briefs and the
supplemental briefs, and if I understand the history of that
case, the initial petition for cert. to the Supreme Court did
not even raise the issue of the residual clause, and the case
was argued in November, I believe, of 2014 initially, and then
the Supreme Court on its own volition issued an order in

1 January of this year asking the parties to rebrief the issue of
2 whether or not the residual clause of the armed criminal act is
3 unconstitutionally vague. Both parties filed supplemental
4 briefs, and it was just argued April 20th.

5 THE COURT: Residual clause meaning the clause that
6 otherwise involves conduct that presents a serious potential
7 risk of physical injury?

8 MR. GARRITY: Yes, your Honor, and I know in our
9 circuit citing with *Almenas*, that clause has been interpreted
10:03AM 10 with respect to resisting arrest convictions to determine those
11 offenses are violent felonies.

12 Both parties in the *Johnson* case addressed the later
13 case of *Weeks* in both of the supplemental briefs, so I think
14 the issue is a live one at this point based on --

15 THE COURT: And, I'm sorry, just because it happened
16 so late, I haven't had a chance to look at it. The
17 First Circuit law on resisting -- the Massachusetts resisting
18 arrest statute, has that been under the residual prong or has
19 it been under the use of physical force?

10:04AM 20 MR. GARRITY: Both, Judge. In *Almenas*, the Court said
21 there's two methods of committing resisting arrest under the
22 Massachusetts statute. One follows clearly within the first
23 prong of the violent felony definition. The second one they
24 determined fell within the second prong, the residual prong,
25 and they did a *Begay* analysis and found it was purposeful,

1 violent and aggressive, as they viewed it.

2 That was carried on in *Weeks* and *Carrigan*, so in part
3 it's determined by the residual clause to be a violent felony.
4 If the *Johnson* case finds that the residual clause is
5 unconstitutionally vague, I think that leaves open the question
6 whether or not the cases in the First Circuit were correctly
7 decided.

8 THE COURT: But if they found that the resisting
9 arrest statute fell under the other prong of the statute, why
10:05AM 10 would the case law no longer be good?

11 MR. GARRITY: Because there's two ways of committing
12 it, Judge, and I guess that would then --

13 THE COURT: Two ways of committing it, meaning we have
14 to look to what the charging documents say?

15 MR. GARRITY: Exactly, Judge, and what the defendant
16 pled to and all of the modified categorical approach documents
17 that are allowed to be looked at. I think that would determine
18 whether or not if the residual clause is voided could affect
19 whether or not resisting arrest convictions still stand as
10:05AM 20 violent felonies.

21 Judge, I think that issue is a live one because, as I
22 say, both parties addressed it in the supplemental briefs, so I
23 think the parties in that case believed it's part of the
24 analysis, and I think it really calls into question given what
25 Mr. Belin is looking at here, I would ask that the Court

1 consider postponing the sentence until *Johnson* is decided.

2 THE COURT: Help me out. If the case was reargued on
3 April 20th, does that mean that a decision is going to almost
4 certainly will come out before they go off for the summer, that
5 is, at the end of June or thereabouts?

6 MR. GARRITY: I would think so. I think that's a fair
7 guess. As I say, it was initially argued last fall and then
8 reargued on this additional issue that the Court raised.

9 THE COURT: Mr. Wortmann.

10:06AM 10 MR. WORTMANN: Your Honor, I guess here are the things
11 that I'm sure of about this case. One is that the law, as it
12 currently stands, resisting arrest is a violent felony for the
13 purposes of the armed career criminal act.

14 Secondly, this case has been pending for two and a
15 half years, and regardless of how the -- it's not clear that a
16 decision either way would affect this case. We just won't know
17 until we see the decision. Even if they conclude that there's
18 a void for vagueness problem, and I'm not aware of any lower
19 courts that have held that, and I think there's some doubt in
10:07AM 20 the Supreme Court language, but, you know, it seems to me, your
21 Honor, that even if he was not an armed career criminal, his
22 guideline range would be 28-6, which is 140 to 175 months, and
23 I think that it's two and a half years in pretrial confinement
24 is enough, and we ought to start -- we ought to get Mr. Belin
25 out to the Bureau of Prisons where he can get appropriate

1 programming. If the, you know, most extreme thing happens and
2 we have to re-sentence him, we're all ready to go, and it's
3 time to move this case out of here, and if we have to bring it
4 back, it won't be the only case that gets brought back. And if
5 this happens quickly, he might not even be out of the district
6 by the time it happens, but I'm prepared to go forward today.

7 THE COURT: Let me ask about that. I mean, one of the
8 things that obviously concerns me is suppose *Johnson* comes out,
9 it's favorable to the defendant, would that have to cycle
10 through an appeal or would the government -- how would that --

11 MR. WORTMANN: Well, your Honor.

12 THE COURT: I lose jurisdiction, don't I, once I
13 sentence him?

14 MR. WORTMANN: You do, but when his appeal was filed,
15 and that's going to depend on what the language of the case is
16 because I've said it could or could not affect this case. I
17 don't know, Mr. Garrity, none of us know, and if it does affect
18 this case, then I suspect that they'll be -- this could involve
19 enough cases so they'd be broad guidelines, and I would think
20 the Department of Justice would move fairly quickly, as it has
21 on the crack re-sentencing a number of times, but, you know,
22 the downside is really none other than the fact that Mr. Belin
23 would have to be brought back in for a re-sentencing. It's
24 going to be one of many, but, again, it could come in June, it
25 could be one of those rare cases or unusual cases, and I agree

1 it's unusual that it gets decided during the summer, but once
2 it's decided, it doesn't necessarily mean that we're going to
3 be able to resolve it, so we may be still trying to figure out
4 what it means, and Mr. Belin is still sitting in pretrial
5 custody, you know, in substantial lockdown 23-7 and getting
6 very little programming.

7 You know, if this were a case where he could be
8 looking at time served or anything close to that, but that's
9 not going to happen here because of the seriousness of the
10:10AM 10 criminal record because you've got two priors, you've got an
11 obliterated serial number, so I still think regardless of what
12 happens, he's going to be looking at -- there was drugs
13 involved as well, we're going to be looking at a serious
14 sentence, and I think we ought to have him start serving that
15 sentence both for his own good and the sense of just moving the
16 case along.

17 THE COURT: Mr. Garrity.

18 MR. GARRITY: Judge, I could see, Number 1, reading
19 the teas leaves in terms of what the Court may do, but I think
10:10AM 20 it is telling that when I read through the documents of the
21 initial cert. petition did not raise the issue and the
22 Supreme Court on its own ordered the parties to address the
23 issue, and I looked at a blog, Supreme Court blog, and if I
24 read it correctly, it indicated the votes may not be there for
25 the residual clause to survive.

1 THE COURT: Let's assume that's true. I mean, the
2 question then is then what? Again, if the resisting arrest --

3 MR. GARRITY: If they're found not to be predicate
4 offenses, Judge, then Mr. Belin is looking at a 10-year
5 maximum, so it is a sizeable swing for Mr. Belin. I would
6 guess, again, it's just a guess but the Supreme Court would
7 decide by the end of -- before they go off for the summer
8 recess.

9 I think it would be a better use of judicial resources
10:11AM 10 to keep Mr. Belin here. That way I can consult with him. If
11 he's sent off into the B.O.P., he's going to be in a prison far
12 away from my office. The only communication I'll have with
13 him, by phone and letter, now I have personal contact with him.
14 If we put it off until some time in July or August, that would
15 be my request, your Honor.

16 MR. WORTMANN: I'd certainly join in the
17 recommendation for the B.O.P. that Mr. Belin be sent to the new
18 facility in New Hampshire, which means he'll be close to
19 Massachusetts.

10:12AM 20 THE COURT: Is that the new one in Berlin?

21 MR. WORTMANN: Correct.

22 THE COURT: There's no guarantee that will happen?

23 MR. WORTMANN: There is no guarantee, that is correct,
24 your Honor.

25 THE COURT: All right. I think this is a close call

1 either way. I think with some misgivings because I certainly
2 take heart with what Mr. Wortmann is saying, I think in the
3 scheme of things, another 60 days probably doesn't make that
4 big a difference. I'd be disinclined to continue it beyond
5 that. If the decision is still pending, I think we'll go
6 forward and handle it that way, but I think at this stage we
7 may as well wait the extra time, again, with some misgivings.
8 It's not clear to me what difference or even if it does make a
9 difference whether we will be able to process it or not. I
10 think Mr. Belin is looking at 10 years, 15 years, 16 years as
11 the government recommends or conceivably higher, although
12 that's doubtful, given the government's recommendation. How
13 about Thursday, July 9th at 2:00? Will that work for
14 sentencing?

15 MR. WORTMANN: Yes, your Honor.

16 MR. GARRITY: Yes, your Honor.

17 THE COURT: So I will grant the motion to continue to
18 that extent. It may not give us much time to process the
19 decision if we have to do some kind of hearing where we're
20 looking at what underlies these resisting arrest offenses,
21 we'll take that up in due course and see what happens. I guess
22 I'm convinced that this is the prudent and sensible thing to
23 do, although, obviously it's not completely clear. We'll
24 handle it that way, Thursday, July 9th for the sentencing.
25 We'll see where we are at that point.

1 MR. GARRITY: Thank you.

2 MR. WORTMANN: Thank you, your Honor.

3 THE CLERK: All rise.

4 (Whereupon, the hearing was adjourned at 10:15 a.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 12 inclusive, was recorded by me
stenographically at the time and place aforesaid in Criminal
Action No. 13-10048-FDS, UNITED STATES OF AMERICA vs.
KING BELIN and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

Dated this 4th day of January, 2015.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER